

## **12. IMPLEMENTATION PROCEDURES**

The preliminary report identified numerous areas where LCP procedures should be revised to ensure that the LCP is being implemented consistent with the Coastal Act and the California Code of Administrative Regulations. In addition, the preliminary report suggests changes to the LCP, as well as changes to current methods of administration, intended to improve the quality of environmental analysis and to maximize public participation and regulatory efficiency. It is envisioned that many of these procedural changes and improvements would be achieved through one or more amendments to the Coastal Zone Land Use Ordinance that would address application requirements, noticing, appeals, variances, non-conforming uses, exemptions, exclusions, emergencies, easements, and enforcement. (Please see Recommendations 12.1 – 12.17.)

For the most part, specific comments regarding the procedural recommendations contained in the preliminary report were limited to those contained in the County staff report prepared for the May 1, 2001 Board of Supervisors meeting. The preliminary procedural recommendations that the County has indicated their general agreement with, and have been carried over without change into the final report, include:

- Preliminary Recommendation 12.1, 3<sup>rd</sup> bullet, calling for the appealability of development to be determined according to what exists on the ground as opposed to what is shown on LCP and Post-Certification maps.
- Preliminary Recommendation 12.2, suggesting better coordination between County and Commission staff on projects that cross jurisdictional boundaries, and the pursuit of a coordinated permit review procedures for such cases.<sup>71</sup>
- Preliminary Recommendation 12.3, to update the Area Plan in a way that will resolve areas of deferred certification (e.g., Sweet Springs Marsh and Otto Property)
- Preliminary Recommendation 12.6, recommending the review of previously approved Categorical Exclusions<sup>72</sup>.
- Preliminary Recommendation 12.10, calling for Executive Director review and approval of locally required easements and dedications.

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<sup>71</sup> If a revision to the Coastal Act is needed to implement a coordinated permit review process (i.e., a single coastal development permit from the Coastal Commission rather than requiring two separate permits for each portion of the project lying in separate jurisdictions), it is recognized that the responsibility for initiating such legislation lies with the Coastal Commission.

<sup>72</sup> The County's conceptual agreement with this recommendation is based on an understanding that the Commission staff would take the lead in this review.

- Preliminary Recommendation 12.11, clarifying that if any component of a project is a conditional use the entire project is appealable.
- Preliminary Recommendations 12.13 and 12.14, advocating better interagency coordination on enforcement activities and emergency permits. In agreeing with Preliminary Recommendation 12.14, the County has suggested the preparation of an Emergency Permit Procedure Manual. In addition, the County has proposed developing a process to identify areas that are susceptible to emergency situations (e.g., the flood plain along Arroyo Grande Creek). This process would include preparation of and Emergency Prevention Implementation Plan focusing on methods and agency contacts for avoiding emergencies. These suggestions have been incorporated into final Recommendation 12.14 as follows:

**Recommendation 12.14: Improve Coordination Regarding Emergency Actions**

When time allows, consult with the Commission regarding alleged emergencies. This is critically important when a proposed emergency action may result in development on lands that are within the permit jurisdiction of the Coastal Commission.

To facilitate improved coordination and emergency permit processing, the County should prepare an Emergency Permit Procedure Manual. In addition, the County should initiate a process to identify areas that are susceptible to emergency situations (e.g., the flood plain along Arroyo Grande Creek), and to prepare Emergency Prevention Implementation Plans for these areas focusing on methods for avoiding emergencies.

The issues and preliminary recommendations contained in the Preliminary Report that the County staff and other commenters disagree with, or have proposed alternatives to, are addressed below.

## **A. Defining Development**

### **1. Summary of Findings**

Page 353 of the Preliminary Report (page 355 in *Preliminary Report as Revised*) reiterated the issues associated with Certificates of Compliance addressed in detail by Chapter 5 of the Preliminary Report at pages 210 - 228. A procedural change suggested to respond to these issues was to identify all Certificates of Compliance, not just Conditional Certificates of Compliance, as development that requires a coastal development permit.

### **2. Comments Received**

County staff has expressed significant concerns regarding this suggestion. An explanation of these concerns, and the final recommendation proposed by Commission staff to address this important issue in light of the comments received, are detailed in Chapter 5 of this final report.

### **3. Analysis and Conclusion**

Because Chapter 5 addresses this issue in detail, Commission staff recommends that the last 2 paragraphs on page 353 of the Preliminary Report (page 355 in *Preliminary Report as Revised* )

be deleted. Please refer to Chapter 5 of this report for a conclusion on how the County's implementation of the LCP, in regard to Certificates of Compliance, should be revised to ensure consistency with Coastal Act requirements.

## **B. Coastal Zone Boundary and Permit Jurisdiction**

### **1. Summary of Findings**

The preliminary report identified the need for accurate determinations of the coastal zone boundary and permit jurisdictions as a critical procedural step in the development review process. Preliminary Recommendation 12.1 therefore proposed updates to the LCP and post-certification maps used to delineate permit jurisdictions.

Notwithstanding the improvements that could be realized through updates to the maps, accurate determinations of permit jurisdictions would continue to be difficult along shoreline areas (e.g., seawall proposals), where permit jurisdictions may change over time due to the ambulatory nature of the mean high tide line. To address this challenge, Preliminary Recommendation 12.2 recommended better coordination between the County and Commission staff in situations such as these. In addition, this recommendation suggested that where development proposals cross jurisdictional boundaries, a coordinated permit process should be pursued, recognizing that such a process may necessitate a change to the Coastal Act.

### **2. Comments Received**

County staff has indicated their disagreement with the portions of recommendations 12.1 and 12.2 calling for updates the LCP and Post-certification maps and increased coordination on where the coastal zone and appeal boundaries may lie. As an alternative, County staff has suggested that the Commission provide coastal zone boundary and appeal maps in electronic form that the County could use to identify any discrepancies with the LCP maps.

### **3. Analysis**

It appears that the County's objection to these recommendations is based on an impression that the Coastal Commission rather than local government has the primary responsibility of providing coastal jurisdictions with accurate maps of coastal zone and appeal boundaries.

The preliminary recommendations were not intended to place this responsibility solely on the local governments. Rather, they were created with the intent of establishing a cooperative process under which the locally adopted LCP maps, as well as the post-certification maps approved by the Commission, could be improved in terms of accuracy and consistency. The recommendations were also intended to facilitate early discussion between the County and the Commission where the maps may not resolve jurisdictional questions.

The Commission recognizes its responsibility for providing the local government with post-certification maps that accurately depict, to the greatest degree feasible, the coastal zone boundary and the geographic areas where locally approved development is appealable to the Commission pursuant to Section 30603 of the Coastal Act.

However, the County also plays an important role in resolving jurisdictional issues. The County has the primary responsibility of updating the LCP maps in a way that conforms to the post certification maps and incorporates the appeal criteria established by the LCP (e.g., the presence of an SRA). In addition, as the first point of contact for local development proposals, the County is in the best position to coordinate with other agencies, particularly the Commission, to resolve questions regarding permit and appeal jurisdiction.

The County's suggestion that the Commission provide electronic versions of updated post certification maps has been incorporated into Preliminary Recommendation 12.1 as follows:

**Recommendation 12.1: Update LCP and Post-Certification Maps**

- The County and the Commission staff should coordinate a review of LCP Maps for accurate delineations of coastal zone boundary and sensitive resource areas and update as necessary.
- The Coastal Commission staff, in coordination with the County, should update the Post-Certification maps to accurately reflect permit and appeal jurisdictions. Once updated, the Commission should provide electronic versions of these maps for use in updating LCP maps.
- Recognize that the appealability of development based on geographic criteria (e.g., the presence of an SRA, a location between the first public road and the sea) should be determined according to what is on the ground as opposed to what is shown on the LCP and Post-Certification Maps. An exception to this is that roads constructed without the proper permits should not be considered as the first public road.

#### **4. Conclusions**

Preliminary Recommendations 12.1 and 12.2 ensure that questions regarding permit and appeal jurisdictions are resolved in a coordinated manner that ensures the LCP is implemented consistent with Coastal Act policies.

#### **C. Permit Exemptions and Temporary Events**

##### **1. Summary of *Preliminary Review Periodic Findings***

The preliminary report identified that the permit exemptions contained in the County's Coastal Zone Land Use Ordinance were not consistent with the exemptions provided by Section 30610 of the Coastal Act and further specified by Sections 13250 – 13253 of the Commission's Regulations (Title 14, Division 5.5). Two examples of such inconsistencies cited by the

preliminary report were the LCP's exemptions for repair and maintenance activities and exemptions for temporary events. Preliminary Recommendations 12.4 and 12.5 responded to these issue by calling for revisions to Section 23.04.040 of the Coastal Zone Land Use Ordinance, and for incorporating the updated provisions regarding temporary events adopted as part of the Avila Beach Specific Plan into the CZLUO.

## **2. Comments Received**

County staff has agreed to a full evaluation of the LCP's permit exemptions, but has reserved judgement on whether they agree with the changes that will come out of this review. With regard to temporary events, they have agreed to incorporate the general concepts developed through the Commission's review of the Avila Beach Specific Plan, but have indicated that they would prefer not to incorporate these provisions in their entirety.

## **3. Analysis**

The implementation of Preliminary Recommendations 12.4 and 12.5, as well as many of the other procedural recommendations, is anticipated to be achieved through a comprehensive update of the implementation provisions contained in the Coastal Zone Land Use Ordinance. This process will necessitate further discussion with the County, and close coordination on the specific contents of the amendment. It is during this process that the additional information requested by the County will be developed.

Regarding temporary events, the Commission is familiar with the complexities and controversies that can be generated in determining whether a temporary event may pose significant impacts on coastal resources and therefore triggers the need for a permit pursuant to Section 30610(i) of the Coastal Act. As directed by the Coastal Act, the Commission has adopted guidelines to assist local governments in complying with Coastal Act requirements.

The temporary event guidelines adopted by the Commission provided a framework for developing the temporary event provisions that were incorporated into the San Luis Bay Area Plan via the Avila Beach Specific Plan. The updated San Luis Bay Area Plan standards provide the details necessary to ensure that the full range of potential impacts to coastal resources associated with temporary events. Incorporations of these standards into the CZLUO will allow for these issues to be effectively addressed throughout the San Luis Obispo County coastal zone, and will maintain consistency with the San Luis Bay Area Plan.

## **4. Conclusion**

Additional information regarding the specific changes necessary to ensure that the implementation of LCP permit exemptions conformance to the Coastal Act will be developed in coordination with the County as part of a comprehensive amendment to the CZLUO. The recommended permit requirements for temporary events will ensure that LCP implementation will not exempt temporary events that may have a significant impact on coastal resources,

consistent with the provisions of Coastal Act Section 30610(i). As a result, Preliminary Recommendations 12.5 and 12.6 have been carried over into the final report without change.

## **D. Noticing Procedures**

### **1. Summary of Preliminary Review Periodic Findings**

The Preliminary Report documented noticing problems associated with the various types of County Coastal Development Permits. Emergency permits, permit amendments, permit extensions, grading permits, and land use permits (Plot Plans, Minor Use Permits, and Development Plans) involve different noticing procedures, and equate to a coastal development in differing circumstances. A grading permit, for instance, constitutes a coastal development permit when not associated with a land use permit<sup>73</sup>. These should, but not always are, noticed as a coastal development permit. In contrast, a grading permit required as a condition of a land use permit is not considered a separate coastal development permit.<sup>74</sup> Noticing standards also differ when development is appealable to the Coastal Commission, which is based on the type and geographic location of the development.<sup>75</sup> Ensuring that LCP noticing standards are implemented consistent with the Coastal Act and Administrative Regulations was the focus of Preliminary Recommendation 12.7.

### **2. Comments Received**

The County has observed that the Commission's noticing procedures should be improved as well. Specifically, the County has suggested that Commission accept Notices of Final County Action electronically, and inform the County of the dates and completion of the Commission appeal period. With respect to noticing grading permits, the County has suggested that such notice be limited to grading activities within 100 feet of an ESHA by requiring a Minor Use Permit for such activities. County staff has indicated their agreement with the recommendation to coordinate emergency permits with the Commission staff.

### **3. Analysis**

The Commission should improve its noticing regarding appeal periods as recommended by the County. This will assist the County in knowing when local building permits can be released, and has been incorporated into Recommendation 12.7 as follows:

**Recommendation 12.7: Improve Noticing and Processing Procedures**

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<sup>73</sup> CZLUO Section 23.05.025

<sup>74</sup> Ensuring that the impacts of grading on coastal resources are effectively addressed at the Land Use Permit stage is an issue that will be addressed when the Commission considers the pending amendment to the Grading Standards contained in the CZLUO.

<sup>75</sup> Section 23.01.043 of the CZLUO specifies when development approvals are appealable to the Coastal Commission .

The Commission staff should coordinate with the County to resolve noticing and processing issues related to CDPs, CDP amendments and extensions, grading permits, emergency permits, and appeals. In some cases, changes to the LCP may be needed to bring LCP noticing and processing requirements in conformance with the Coastal Act and the California Code of Regulations. The Commission too should improve its noticing procedures. In particular, Commission staff should provide the following notice to the County:

- The date on which Notices of Final Action are received. This will inform the County of the Coastal Commission appeal period for those projects that are appealable, and the effective date of the local permit for unappealable development;
- Whether any appeals have been received at the conclusion of the Coastal Commission appeal period. If no appeals have been filed, this notice will confirm the County's ability to release local building permits. If an appeal has been filed, this notice will allow the County to send the Commission a copy of the local file in a more timely manner.

The suggested electronic acceptance of Final Local Action Notices raises a more challenging question. Section 13571 of the Commission's Administrative Regulations specifies that such notice should be provided by first class mail. This ensures that all interested parties receive such notice within the same timeframe. Otherwise, the Commission's appeal period may commence prior to the time that someone interested in appealing the project would receive notice of the County's action. Although the Commission is supportive of changes in noticing practices that will improve the efficiency of the coastal development permit process, maximum public participation in the oversight process must also be assured. Further research is warranted concerning this question. For the time being, though, this suggestion has not been incorporated into the recommendations for procedural improvements.

The County's suggestion to limit the noticing of grading permits to those that involve grading within 100 feet of an ESHA is also problematic. One of the most important changes needed to ensure that the LCP noticing procedures are implemented in conformity with the Coastal Act and Section 13571 of the Administrative Regulations is to ensure that the Commission receives notice of the County's final action on all coastal development approvals, whether or not the project is appealable to the Coastal Commission. Currently, the County interprets the CZLUO as requiring the County to provide notice to the Commission of its final actions on appealable projects only. The problem with this interpretation is that it does not provide the Commission with the opportunity to evaluate whether the County determination regarding appealability has been made correctly. Thus, the Commission should be noticed of all grading permits that function as coastal development permits (i.e., when they are not associated with a land use permit) regardless of geographic location.

#### **4. Conclusion**

The noticing improvements called for by Recommendation 12.7 are needed to ensure that the LCP is implemented in conformity with the Coastal Act and Title 14, Division 5.5 of the California Code of Regulations. Additional coordination between Commission and County staffs will be needed to develop the specific changes to the CZLUO required to implement this

recommendation. The need for the Commission to also improve its noticing procedures are reflected in the changes to Recommendation 12.7 proposed by this report.

## **E. Allowable and Principally Permitted Uses**

### **1. Summary of Preliminary Periodic Review Findings**

The preliminary report identified procedural problems associated with Table O, the primary LCP component used to determine if different types of development are allowable, and whether they constitute a principally permitted use. These include:

- Table O does not identify that only resource dependent uses are principally permitted within ESHA;
- Table O does not identify that land divisions are a conditional rather than principally permitted use; and
- Table O does not clearly differentiate between conditional uses and the principally permitted use.

### **2. Comments Received**

Rather than clarifying Table O to identify all uses other than resources dependent uses in ESHA as conditional, the County has suggested that the non-resource dependent development could still be designated as principally permitted, but listed as appealable to the Coastal Commission.

The County also disagrees with the provisions of preliminary recommendation 12.8 calling for all uses listed as “S” (special) uses by Table O, as well as all subdivisions, certificates of compliance (COC’s), and lot line adjustments (LLA’s), to be considered conditional uses. The application of special standards to S uses, in the opinion of County staff, should not require that these uses be considered conditional. With respect to subdivisions, COC’s and LLA’s the County asserts that these are not land uses, and therefore do not qualify as conditional uses. Again, the County suggests that the concerns expressed over these types of development be addressed by making them appealable based on geographic (e.g., within an ESHA) rather than use criteria.

### **3. Analysis and Response**

Coastal Act Section 30603a(4) specifies that “any development approved by coastal county that is not designated as the principally permitted use” shall be appealable to the Coastal Commission (emphasis added). This means that only one type of use should be considered as principally permitted within each land use category, and that all others should be considered as conditional. Within this context, the kinds of development that necessitate the application of special standards, and are not directly associated with the identified principally permitted use<sup>76</sup>, should

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<sup>76</sup> The designation of a single principally permitted use does not exclude subsets of that use from also being considered principally permitted. For example, in residential districts where single family residences are designated



be processed as conditional uses. This includes subdivisions which, under CZLUO 21.08.020(a) includes lot line adjustments and conditional certificates of compliance, and which are defined as development for purposes of the Coastal Act and the LCP. In terms of the protection of coastal resources, the logic of this is clear, inasmuch as land divisions typically lead to fundamental changes in future locations, densities, and intensities of coastal development that can significantly impact coastal resources. The appealability of land divisions and other uses subject to conditional approval assures adequate oversight of these potentially fundamental land use impacts.

The alternative of maintaining a number of uses as principally permitted uses, but listing them as appealable based on geographic criteria (i.e., within an ESHA) is not as preferable as clarifying what constitutes the principal permitted use within each land use designation. It is not just an issue of appealability, but relates to the clear articulation of land use regulations. It is inappropriate for Table O to imply that the all uses listed as “P” use are principally permitted, irrespective of environmental constraints such as ESHA, because it can create false expectations regarding the type and extent of development that can be allowed on the site.

#### **4. Conclusion**

Preliminary Recommendation 12.8 has not been modified because the clarification of what is allowable and principally permitted is necessary to ensure that the LCP is implemented in conformity with various policies of the Coastal Act, including Section 30240(a) and 30603 (a)(4).

#### **F. Application Requirements**

##### **1. Summary of Preliminary Periodic Review Findings**

The application requirements for coastal development projects have been found, in some cases, to be deficient in obtaining the information necessary to evaluate coastal resource issues. This problem is related to both the content of the LCP ordinances, and the way in which the County implements them.

##### **2. Comments Received**

The County agrees that detailed plans (grading, landscape, drainage, etc.) should be obtained at the application stage *when resource protection is at stake*. For example, a landscape plan is noted as being appropriate to require at the application stage where scenic resources are at stake. In other circumstances, County staff asserts that specific construction plans should be required as condition of the discretionary coastal development/land use permit, so that the applicant can be sure that the project is approved before final plans are prepared.

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as the principally permitted use, it may be appropriate to consider certain residential accessory uses as part of the principally permitted residential use.

The County has also requested the Commission staff to review the existing application requirements in more detail, and provide a more specific description of the changes that are needed.

### **3. Analysis**

It is agreed that a balance must be struck between obtaining all the information needed for an up-front analysis of resource issues, and requiring such detailed plans at the application stage that any change to the plans determined to be necessary becomes an excessive burden upon the applicant. In general, the “resource test” (i.e., whether or coastal resource issues are at stake) is a good indicator of when more detailed plans may be required as part of a development application.

While this often necessitates discretion upon the part of County planning staff, there are certain pieces of information that should *always* be required at the application stage. For instance, providing evidence of adequate water supply and wastewater treatment should be a prerequisite to development that should be addressed prior to the investment of significant resources into project development and review.

As suggested by the County, additional review of the existing application requirements is needed to determine the specific changes necessary. The preliminary report has identified the coastal resource issues (e.g., water quality, ESHA) where a rigorous review application requirements are warranted. Additional particulars will be forthcoming in the recommended modifications to the submitted grading ordinance amendment and other pending LCP updates.

The preliminary report also identifies that obtaining the necessary environmental information at the application stage is not, in all cases, dependent upon updates to existing LCP application standards, but can be achieved through refined administration of existing ordinances. The demonstration of adequate water and sewer prior to the acceptance of an application is one such administrative improvement crucial to implementing the LCP consistent with the Coastal Act.

### **4. Conclusion**

Recommendation 12.8 will improve LCP implementation procedures in a way that will ensure that standards for development established by Chapter 3 of the Coastal Act issues are effectively addressed during development review. In addition to benefiting coastal resources, it should increase the efficiency of the permit review process by minimizing the number of appeals filed over unresolved issues. The County’s suggestion to complete a more thorough review of existing application requirements, and their request for more specificity, will be undertaken as part of the detailed update to LCP procedures needed to respond to the full range of recommendations presented by this report.

## **G. Condition Compliance**

### **1. Summary of Preliminary Periodic Review Findings**

To make certain that permit conditions are effectively carried out, the Preliminary report suggests the development of a tracking system that would be available to all County Departments and Commission staff.

### **2. Comments Received**

The County is currently developing a tracking system that may be used to implement this recommendation, but will involve additional staffing costs. More information is needed for the County to understand what is expected and what is legally required.

### **3. Analysis and Response**

There is no legal requirement for the County to develop the tracking system proposed by Recommendation 12.12. It is a suggested tool for enhancing condition compliance, which has been identified in public testimony as a weakness in LCP implementation. If accessible to the Commission staff, the Central Coast District office would be in a better able to assist the County in condition follow-through and respond to inquiries received about alleged violations.

Preliminary Recommendation has been revised to clarify that it is only a suggestion as follows:

**Recommendation 12.12: Improve Methods for Ensuring Compliance with Permit Conditions**

Among other means available to achieve effective compliance with permit conditions, the County could develop a tracking system that would be available to all relevant County departments and Commission staff.

### **4. Conclusion**

Although not legally required, implementation of Recommendation 12.12 is strongly encouraged as a means to better achieve resource protection objectives of the Coastal Act and LCP.

## **H. Variances**

### **1. Summary of Preliminary Periodic Review Findings**

Chapter 4 of the Preliminary Report identified instances where variances to LCP habitat protection requirements may have been inappropriately approved. The Commission has also overturned variances to setback standards granted by the County. To address the concern that the approval of variances may be undermining the resource protection provisions of the Coastal Act, Preliminary Recommendation 12.15 calls for greater limitations on the use of variances. For example, the Preliminary Report suggests prohibiting variances when they would result in adverse impacts to Environmentally Sensitive Habitats.

## **2. Comments Received**

The County response expresses concern that limiting the use of variances would create legal liabilities and could equate to a "takings" and states that the County will not take action to preclude the use of variances where a taking may occur and result in costly lawsuits for the County. The response requests acknowledgement that limiting the use of variances may result in significant reductions in project size and impacts to the economic backed expectations of applicants.

## **3. Analysis**

The need to grant variances in situations where the strict application of a development standard would result in a taking is well understood by the Commission. The "constitutional variance" provided by Section 30010 of the Coastal Act has been invoked by the Commission where development that is inconsistent with the Coastal Act because of its impact on ESHA must be accommodated to avoid a taking. These procedures are very similar to those a local government uses in granting a variance.

The intent of Preliminary Recommendation 12.15 is not to preclude the County from granting variances in situations where the variance is needed to prevent a taking. Rather, the purpose of this recommendation is to respond to the potential for variances to be misused. An example of such potential misuse is presented on pages 164-166 of the Preliminary Report.

One potential limit on the use of variances suggested by Preliminary Recommendation 12.15 is prohibiting their approval where the variance would adversely affect ESHA. Again, this is not intended to result in a taking. The recommendation must be read in concert with Preliminary Recommendations 4.10 and 4.11, which provide specific suggestions for balancing the rights of private property owners with the need to protect ESHA.

Taken together, these recommendations would not prevent the County from granting the exceptions to LCP standards where necessary to prevent a taking. Instead, they call for a more detailed analysis of the particular facts necessary to strike the appropriate balance between the protection of private property rights and sensitive coastal resources. Existing variance procedures could still be used to resolve less complex issues, such as where an adjustment is needed to accommodate an economic use on steep slopes where no alternative is available. However, where significant habitats are at stake, a higher level of analysis, such as that suggested by Recommendation 4.10, would be required before an exception to ESHA protection standards could be granted. To clarify this, Preliminary Recommendation 12.15 has been revised as follows:

**Recommendation 12.15: ~~Further Restrict the Use of Variances~~ Expand Standards for Approval of Variances**

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the addendum and hearing of July 12, 2001*

Incorporate additional ~~limitations~~ standards regarding the use of variances into the LCP (~~e.g., prohibit the use of variances where the project will adversely impact Environmentally Sensitive Habitats~~). For instance, where a variance is needed to prevent the strict application of ESHA protection standards from resulting in a taking, approval of the variance should be accompanied by information and analyses needed to establish that the variance is warranted under Coastal Act Section 30010.

An additional way to ensure that variances are not inappropriately granted is to make their approval appealable to the Coastal Commission. Coastal Act Section 30603(a)(4) states that any development not designated as the principal permitted use under the zoning ordinance or zoning district map is appealable to the Coastal Commission. A *principally permitted* use is limited to the specific type of developed envisioned for a particular area of land. Conversely, the approval of a variance is a discretionary action that allows for a development/land use that is not consistent with development standards, subject to the conditional approval of the decisionmaking body (see CZLUO 23.01.045(d)). It would therefore be appropriate to amend the LCP in a manner that would establish that any development that requires a variance is, by definition, a conditionally permitted use, appealable to the Coastal Commission. Such a provision is contained in Chapter 20.78 of the Monterey County certified Implementation Plan, and is recommended to be incorporated into the San Luis Obispo County LCP by the following new recommendation:

**Recommendation 12.18: Institute Appeal Provisions for Variances**

Amend the LCP to identify that any development approved by variance is a conditionally permitted use appealable to the Coastal Commission. An appropriate location for this change would be within Section 23.01.045 of the CZLUO.

#### **4. Conclusion**

Recommendations 12.15 and 12.18 will ensure that the implementation of LCP variance provisions will not unnecessarily undermine the coastal resource protection objectives of the Coastal Act.

#### **I. Non-Conforming Uses, Structures, and Parcels**

##### **1. Summary of Preliminary Periodic Review Findings**

Various issues regarding the interpretation of exiting LCP standards for non-conforming uses, structures, and parcels have been raised in recent appeals. For example, the preliminary report identified implementation problems associated with the development of parcels that do not conform to minimum lot size requirements.

Preliminary Recommendation 12.16 proposed two actions to address these problems. First, it recommends that LCP standards for non-conforming situations be clarified. This would most

likely take the form of an update to Chapter 9 of the CZLUO. Second, it recommends that the County consider incorporating new standards for the development, adjustment, and certification of non-conforming lots into Chapter 9 of the CZLUO.

## **2. Comments Received**

The County response indicates agreement with the recommendation to clarify and update Chapter 9 of the CZLUO. However, based on legal concerns, they disagree with the portion of the recommendation calling for new standards to address the development, adjustment, and certification of non-conforming lots.

## **3. Analysis**

It is recognized that the County's ability to require the restructuring of non-conforming parcels may be limited by the Subdivision Map Act and other applicable laws. That does not mean, however, that the County is prohibited from taking action to minimize the impacts associated with the certification, adjustment, and development of sub-standards lots. The intent of Preliminary Recommendation 12.16 was to encourage the County to pursue new standards, within its legal authority, that would limit the impacts of such development on coastal resources to the greatest degree feasible. One means of accomplishing this objective with respect to lot line adjustments would be to revise Section 21.02.030(c) of the County's Real Property Division Ordinance so that adjustments must conform to all elements of the LCP (not just the zoning and building ordinances). Other suggestions for addressing this issue are contained in Chapter 5 of this report.

Accordingly, Preliminary Recommendation 12.16 has been revised as follows:

### **Recommendation 12.16: Clarify LCP Provisions Regarding Nonconforming Uses**

Clarify LCP provisions regarding nonconforming uses and structures, and consider incorporating new standards for the development/adjustment/certification of non-conforming parcels as addressed ~~earlier~~ in Chapter 5 of this report. With respect to the adjustment of non-conforming parcels, Section 21.02.030(c) of the County's Real Property Division Ordinance should be revised to require lot line adjustments to conform to all elements of the LCP (not just the zoning and building ordinances). These new standards should be crafted in a way that conforms to all applicable local, state, and federal laws.

## **4. Conclusion**

Improvements to LCP standards that regulate nonconforming uses and structures, and the incorporation of new standards to address development on nonconforming parcels, is needed to ensure that LCP implementation prevents nonconforming development from having adverse impacts on coastal resources in conflict with Chapter 3 of the Coastal Act.

## **J. Efficient Resolution of Appeals**

### **1. Summary of Preliminary Periodic Review Findings**

The Preliminary report identified a number of ways in which the process for appeals to the Coastal Commission can be improved, as well as ways in which the number of projects being appealed to the Commission could be minimized. These include:

- updating maps and methodologies for determining appealability;
- providing Commission staff with copies of County staff reports prior to the local hearing;
- forwarding the local file of appealed projects to the Commission staff in a complete and timely manner<sup>77</sup>;
- utilizing LCP provisions that allows the County to modify its approval of a project in order to resolve an appeal filed by two Commissioners; and,
- incorporating other provisions into the LCP that would allow the County to expeditiously incorporate additional conditions or project revisions to resolve an appeal.

### **2. Comments Received**

The County response states that they disagree/need more information regarding these recommendations. Specifically, the response requests a timeframe for the Commission staff's review of the County's draft staff report (e.g., 10 days), and requests clarification regarding the type of items from the local file the Commission needs when a project is appealed.

### **3. Analysis and Response**

The recommendations of the *Preliminary Report* did not request the County to provide *draft* staff reports for Commission staff review. (While this would be welcomed and encouraged as a means of improving coordination, it is recognized that the timeframe for staff report completion often does not allow as much coordination prior to the reports release as may be desirable.) Rather, the *Preliminary Report* encouraged the County to send the Commission staff a copy of the *final* County staff report prior to the local hearing. It is assumed that County staff currently provides the reports for each hearing to the interested parties and decision-makers in advance of the hearing. The Preliminary report simply requests that these reports be provided to the Commission staff at the same time. The County's current practice is to provide the staff reports after an action has been taken on the project. This unfortunately does not provide the Commission staff with the opportunity to inform the County staff and decision makers about any

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<sup>77</sup> Where the local file may be excessively large and/or difficult to reproduce, the Preliminary Report suggests that the County provide a list of all information contained in the file, and include this list with an initial submittal of all relevant plans, documents, and correspondence. Commission staff could request additional information from this list as may be necessary.

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coastal resource concerns they may have regarding the project or recommended action prior to the local decision.

With regard to the particular type information from the local file that should be transmitted to the Commission staff when an appeal is filed, Sections 13112 of the Coastal Commission's Administrative Regulations state:

*Upon receipt of a Notice of Appeal the local government shall refrain from issuing a development permit for the proposed development and shall, within five (5) working days, deliver to the executive director all relevant documents and materials used by the local government in its consideration of the coastal development permit application. (Emphasis added.)*

The Notice of Appeal used by the Commission further specifies that this should include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony. Preferably, all of this information would be forwarded to the Commission staff within the 5 day time period established by the administrative regulations. When the size and/or content of the local file may prevent the County from meeting this timeframe, the list of the file contents suggested by the Preliminary Report should include each and every item contained in the file that has relevance to the project that has been appealed. This will help prevent delays in the processing of the appeal and ensure that the Commission has been provided all the information needed to evaluate the appeal.

The following changes to Preliminary Recommendation 12.17 clarify what is being requested of the County, and expand on the various options available to improve the appeal process:

**Recommendation 12.17: Provide Additional Opportunities to Efficiently Resolve Appeals**

- Incorporate new procedures into the LCP that would provide additional opportunities to resolve appeals at the local level and use existing LCP provisions that allows the County to modify its approval of a project in order to resolve an appeal filed by two Commissioners.
- Improve procedures for providing Commission staff with all information relevant to appealed projects. The information transmitted must include all documents and materials used by the local government in its consideration of the coastal development permit application. Where the County has a question regarding the need or relevance of particular documents or materials, such questions shall be referred to the Commission staff.
- Provide Commission staff with copies of County staff reports prior to the local hearing.

#### **4. Conclusion**

The procedural improvements recommended by the Preliminary Report are intended to help minimize the number of local approvals being appealed to the Commission, and facilitate the efficient resolution of appeals that are filed. Most importantly, the recommended actions would



ensure that the LCP is implemented in conformity with policies of the Coastal Act regarding appeals and public participation.

The following additional comments generated in response to the Preliminary Report are of a procedural nature, but are not specific to the findings or recommendations contained in Chapter 12.

### **K. Funding**

One concern expressed regarding the preliminary recommendations is the cost and staff time associated with their implementation. Many of the recommendations call for the County to develop new administrative procedures, LCP Amendments, and to expand current update efforts. Carrying out these recommendations will require a commitment of financial resources, as well as additional staff and staff training.

Similarly, the Periodic Review calls on other local agencies and organizations to take certain actions to respond to particular coastal resource concerns. For example, the Cambria Community Services District plays a crucial role in responding to the water supply/riparian habitat issues in the North Coast Area, as well as participating in the protection of forest resources through development and implementation of the Cambria Monterey Pine Forest Management Plan. The Los Osos Community Services District is a critical player in carrying out the recommendations regarding the protection of dune habitat in southern Morro Bay, as well as being the primary entity responsible to addressing wastewater treatment needs.

The LCP grants awarded to San Luis Obispo County, and the dedication of additional Commission staff to the Periodic Review effort, has provided a unique opportunity for enhanced coordination. It has allowed more frequent dialogue regarding pending development applications and planning efforts, periodic visits to the County by the Commission staff, and numerous public workshops, all of which have proven to be valuable tools for resolving issues and improving coordination. The continued commitment of County and Commission funding and staff resources is crucial to the ongoing coordination needed to bring the recommendations of the Periodic Review to fruition.

Other grant and funding opportunities are also needed to facilitate the essential participation of the community services districts and the other local agencies and organizations. Some grant projects already underway will help implement the recommendations of the Periodic Review. For instance, Commission staff, the Morro Bay National Estuary Project, and the California Conservation Corps have secured funding to complete more detailed and accurate delineations of Morro Bay Wetlands, which will have direct application towards updating the LCP's Combining Designation Maps. Taking advantage of existing and new grants, in a collaborative and coordinated fashion, is a key way in which the Periodic Review can be implemented.

In recognition of these important needs, Exhibit E attached to this report identifies potential grant and funding sources that could be used towards fulfilling the recommendations. In addition, the following new Recommendation 12.19 encourages the Commission and County staff to outreach

to grantors and grantees in a way that will promote projects that will achieve the coastal resource protection and planning improvements called for by this report:

**Recommendation 12.19: Improve Coordination with Grant Programs**

Commission and County staff should work with local state and federal grant sources, as well as the recipient of grants, in a way that will facilitate the coastal resource protection and planning improvements called for by this report.

As another means to effectuate the recommendations of the Periodic Review and improve the coastal planning process at both the local and state level, the following new recommendation has been incorporated into this review:

**Recommendation 12.20: Seek Additional Funding and Staffing Resources**

Both the Coastal Commission and the County should attempt to secure the funding necessary to further develop and implement the recommendations of the Periodic Review. In particular, the Commission should continue to offer LCP Grants that will facilitate the County's ability to commit staff resources to this effort, and the County should take full advantage of these and other grant opportunities. In addition, the Commission should seek funding to staff the Central Coast District Office at a level that will enhance its ability to assist and coordinate with San Luis Obispo County.

## **L. Interagency Coordination**

Land use and development in the San Luis Obispo coastal zone often triggers numerous regulatory requirements and the approval of various governmental agencies. Prior to incorporating the additional regulatory requirements recommended by the preliminary report, commenters have requested that the Commission staff identify the other government agencies and organizations working towards similar objectives.

This final report has attempted to better articulate the important role that the LCP plays in the coastal resource protection, and how the LCP can be better integrated with other regulatory programs so they can work together in a coordinated and complimentary manner. Recommendations intended to facilitate improved regulatory coordination include:

- Recommendations within the new development chapter that will enhance coordination between local service providers and the County's development review process;
- Recommendations within the Water Quality Chapter that help define the role of the County in implementing state and nationwide pollution control objectives;
- Recommendations within the agriculture chapter that encourage cooperation with voluntary programs such as those implemented by the National Resource Conservation Service; and,
- Recommendations within the Environmentally Sensitive Habitat Areas Chapter that maximize opportunities for the development of habitat conservation plans that will address the requirements of state and federal endangered species acts as well as the Coastal Act.

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Commission staff will continue to work with the County and other involved agencies to refine the implementation of these recommendations and better integrate existing regulatory programs and requirements.

### **M. LCP Simplification**

The San Luis Obispo County certified LCP is comprised of over 10 documents and two sets of official maps. Commenters have indicated that the size of the LCP makes it difficult to obtain and understand the various standards and requirements that apply to new development.

One option for responding to this issue would be to compile the portions of the LCP that contain the policies, ordinances and standards applicable to new coastal development in a single document. This document could be used as a supplemental tool to the complete LCP that would provide applicants and administrators with a quick reference guide to applicable regulatory standards.

This concept has been incorporated into the final report as new Recommendation 12.21:

**Recommendation 12.21: Develop an LCP “Quick Reference Guide”**

Compile the portions of the LCP that contain the policies, ordinances and standards applicable to new coastal development in a single document that would provide applicants and administrators with a quick reference guide to applicable regulatory standards.